



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D-12035]

Proposed Exemption for Certain Prohibited Transaction Restrictions Involving JPMorgan Chase Co. (JPMC or the Applicant) Located in New York, New York

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and/or the Internal Revenue Code of 1986 (the Code). If the proposed exemption is granted, certain asset managers with specified relationships to JPMorgan Chase Co. (JPMC) (the JPMC Affiliated qualified professional asset managers (QPAMs) and the JPMC Related QPAMs) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption), notwithstanding the judgment of conviction against JPMC, as described below.

DATES: If granted, this proposed exemption will be effective for a period of four years beginning on January 10, 2023, and ending on January 9, 2027, if the exemption's conditions and definitions are satisfied.

Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D-12035 via email to e-OED@dol.gov or online through <https://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue, N.W., Washington, D.C. 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693-8456. (This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Comments:

In light of the current circumstances surrounding the COVID-19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all

comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the *Federal Register*. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

WARNING: All comments received will be included in the public record without change and may be made available

online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <https://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Internet.

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee

Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011).¹ If the proposed exemption is granted, certain asset managers with specified relationships to JPMC (the JPMC Affiliated QPAMs and the JPMC Related QPAMs) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM Exemption),² notwithstanding the judgment of conviction against JPMC (the Conviction)³ for engaging in a conspiracy to fix the price of, or eliminate competition in, the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market. This proposed exemption, if granted, will be effective for a period of four years beginning on January 10, 2023, and ending on January 9,

¹ For purposes of this proposed exemption, references to specific provisions of ERISA Title I, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code Section 4975. Further, this proposed exemption, if granted, does not provide relief from the requirements of, or specific sections of, any law not noted above. Accordingly, the Applicant is responsible for ensuring compliance with any other laws applicable to the transactions described herein.

² 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

³ Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

2027, if the exemption's conditions and definitions are satisfied.

This proposed exemption, would provide relief from certain of the restrictions set forth in ERISA sections 406 and 407. It would not, however, provide relief from any other violation of law. Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, an entity within the JPMC corporate structure is convicted of a crime covered by Section I(g) of PTE 84-14 (other than the Conviction as defined in Section I(a)) during the exemption period (as defined in Section I(c)). Although the JPMC QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption.

The terms of this proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination by a plan that it is otherwise prudent to terminate its relationship with an entity covered by the exemption.

SUMMARY OF FACTS AND REPRESENTATIONS⁴

⁴ The Summary of Facts and Representations is based on the Applicant's representations provided in its exemption application and does not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that availability of this exemption, is subject to the express condition that the material facts and representations contained in application D-12035 are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change

Background

1. JPMC is a financial holding company and global financial services firm incorporated in Delaware and headquartered in New York, New York. JPMC's principal bank subsidiaries are JPMorgan Chase Bank, N.A. and Chase Bank USA, National Association. Two of JPMC's principal non-bank subsidiaries are its primary broker-dealer subsidiary, J.P. Morgan Securities LLC, and its primary investment management subsidiary, J.P. Morgan Investment Management Inc. (JPMIM). JPMC operates through four major reportable segments or lines of business: Consumer & Community Banking (CCB), Corporate & Investment Bank (CIB), Commercial Banking (CB), and Asset & Wealth Management (AWM).

2. JPMC is the publicly-traded parent company of investment management affiliates that function as QPAMs, through which the CCB, CIB, and AWM segments operate. Since the Department granted PTE 2017-03 (as discussed in more detail below), the following seven JPMC QPAMs have exercised discretionary control over the management and disposition of client assets held by ERISA-covered Plans and IRAs (together, Covered Plans):⁵ JPMorgan Chase Bank, N.A., J.P.

in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

⁵ For purposes of this proposed exemption, the term Covered Plan means a plan subject to Part IV of Title I of ERISA (an "ERISA-covered plan") or a plan subject to Code section 4975 (an "IRA"), in each case, with respect to which a JPMC Affiliated QPAM relies on PTE 84-14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84-14.

Morgan Alternative Asset Management, Inc., JPMorgan Asset Management (Asia Pacific) Limited, J.P. Morgan Investment Management Inc., J.P. Morgan Private Investments Inc., J.P. Morgan Securities LLC., and Security Capital Research & Management Incorporated.

The JPMC Affiliated QPAMs provide investment management services to thousands of plans and IRAs. In managing these assets, the JPMC Affiliated QPAMs regularly rely on the QPAM Exemption. In addition to the JPMC Affiliated QPAMs, JPMC currently owns a 5% or greater direct or indirect interest in certain investment managers that are not affiliated with JPMC in the actual control sense (the JPMC Related QPAMs). JPMC does not have the authority to exercise a controlling influence over the JPMC Related QPAMs and is not involved with their clients, strategies, or ERISA assets under management, if any.

ERISA and Code Prohibited Transactions and PTE 84-14

3. The rules set forth in ERISA Section 406 and Code Section 4975(c)(1) proscribe certain “prohibited transactions” between plans and certain parties in interest with respect to those plans.⁶ ERISA Section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the

⁶ For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.⁷ The prohibited transaction provisions under ERISA Section 406(a) and Code Section 4975(c)(1) prohibit, in relevant part, (1) sales, leases, loans, or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.⁸

Under the authority of ERISA Section 408(a) and Code Section 4975(c)(2), the Department has the authority to grant exemptions from such "prohibited transactions" in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) if the Department finds an exemption is: (a) administratively feasible, (b) in the interests of the plan and of its participants and beneficiaries, and (c) protective of the rights of participants and beneficiaries.

4. PTE 84-14 exempts certain prohibited transactions between a party in interest and an "investment fund" (as defined in Section VI(b) of PTE 84-14) in which a plan has an interest if the investment manager satisfies the

⁷ Under the Code, such parties, or similar parties, are referred to as "disqualified persons."

⁸ The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA Section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

definition of "qualified professional asset manager" (QPAM) and satisfies additional conditions of the exemption. PTE 84-14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.⁹

5. Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by the QPAM exemption, for itself and its client plans if that entity, an "affiliate" thereof,¹⁰ or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in section I(g) within the 10 years immediately preceding the transaction. Section I(g) was included in PTE 84-14, in part, based on the Department's expectation that QPAMs and those who may be in

⁹ See 75 FR 38837, 38839 (July 6, 2010).

¹⁰ Section VI(d) of PTE 84-14 defines the term "affiliate" for purposes of Section I(g) as "(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets."

a position to influence the QPAM's policies maintain a high standard of integrity.

JPMC Conviction and PTE 84-14 Disqualification

6. On May 20, 2015, the Department of Justice filed a Criminal Information in the U.S. District Court for the District of Connecticut (the District Court)¹¹ charging JPMC with a one-count violation of the Sherman Antitrust Act.¹² The Information charged that from at least as early as July 2010 until at least January 2013, JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entered into and engaged in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the foreign exchange (FX) spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere (the Criminal Misconduct). The Criminal Misconduct involved near-daily conversations some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders.

JPMC resolved the charges through a plea agreement presented to the District Court on May 20, 2015 (the Plea Agreement), under which JPMC agreed to enter a plea of guilty to the charge set out in the Information. A judgment of the Conviction was subsequently entered against JPMC on

¹¹ Case Number 3:15-CR-79-SRU.

¹² 15 U.S.C. 1.

January 10, 2017, and pursuant to the judgment, JPMC was required to pay approximately \$550 million in total fines and restitution in connection with the Conviction.

The Prior and Existing Exemptions

7. PTE 2016-15. Once the District Court entered the Conviction, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as well as their Covered Plan clients, became ineligible to rely on PTE 84-14, pursuant to section I(g) of the class exemption without receiving an individual prohibited transaction exemption from the Department. The JPMC Affiliated QPAMs submitted an exemption application to the Department on May 20, 2015, and after reviewing the application, the Department granted PTE 2016-15 on January 10, 2017. PTE 2016-15 permitted the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided in the QPAM exemption for one-year period from the date of the Conviction.¹³

8. PTE 2017-03. Subsequently, on December 29, 2017, the Department granted PTE 2017-03, a second individual exemption that permitted the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided by PTE 84-14 for a period of five years beginning on January 10, 2018, and ending on January 9, 2023.¹⁴

¹³ PTE 2016-15, 81 FR 94028 (December 22, 2016). PTE 2016-15 became effective on January 10, 2017 (the date on which the District Court entered the Conviction against JPMC) and expired on January 10, 2018.

¹⁴ PTE 2017-03, 82 FR 61816 (December 29, 2017).

9. PTEs 2016-15 and 2017-03 each contain a set of conditions that are designed to protect those Covered Plans that entrust their assets to a JPMC Affiliated QPAM despite the serious nature of the Criminal Misconduct underlying the Conviction. The Department discusses some of the protective conditions below.¹⁵

Conditions of PTE 2017-03

10. PTE 2017-03 requires each JPMC Affiliated QPAM to develop, implement, maintain, and follow written policies (the Policies) that are reasonably designed to ensure that, among other things: (a) the asset management decisions of the JPMC Affiliated QPAM are independent of the corporate management and business activities of JPMC; (b) the JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties; (c) any filings or statements made by the JPMC Affiliated QPAM to regulators on behalf of Covered Plans are materially accurate and complete; and (d) the JPMC Affiliated QPAM complies with the terms of PTE 2017-03. Further, any violation of or failure to comply with the Policies must be corrected promptly upon discovery, and any such violation or compliance failure that is not promptly corrected must be reported, in writing to appropriate corporate officers upon the discovery of the failure to promptly correct.

¹⁵ The following paragraphs do not discuss all of the conditions set out in PTE 2017-03. For the complete set of conditions, see PTE 2017-03, 82 FR 61816 (December 29, 2017).

11. PTE 2017-03 requires each JPMC Affiliated QPAM to develop and implement a training program (the Training) that is conducted at least annually by a prudently selected independent professional. The Training must cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of PTE 2017-03, and the duty to promptly report wrongdoing.

12. PTE 2017-03 further requires each JPMC Affiliated QPAM to be audited biannually (covering the preceding 12-month period) by a prudently selected independent auditor (the Auditor). The Auditor must evaluate the adequacy of each JPMC Affiliated QPAM's implementation of the Policies and Training requirements of PTE 2017-03 and their compliance with them. The Auditor must issue a written report (the Audit Report) to JPMC and each JPMC Affiliated QPAM to which the audit applies that describes the procedures performed during the Audit. In its Audit Report, the Auditor must assess the adequacy of each of the JPMC Affiliated QPAM's Policies and Training, their compliance with the Policies and Training, the need, if any, to strengthen the Policies and Training, and any instance(s) of noncompliance.

13. PTE 2017-03 also requires certain JPMC senior personnel to review the Audit Report, make certain certifications, and take corrective actions when necessary. In this regard, a general counsel, or one of the three most

senior executive officers of each JPMC Affiliated QPAM to which the Audit Report applies must certify in writing and under penalty of perjury that the officer has reviewed the Audit Report, addressed, corrected, or remedied any inadequacy identified in the Audit Report, and determined that the Policies and Training comply with the requirements of PTE 2017-03 and applicable provisions of ERISA and the Code.

14. PTE 2017-03 requires each JPMC Affiliated QPAM to agree and warrant to its Covered Plan clients that it will:

(a) comply with ERISA and the Code; (b) refrain from engaging in prohibited transactions that are not otherwise exempt (and promptly correct any inadvertent prohibited transactions); and (c) comply with the standards of prudence and loyalty set forth in ERISA Section 404. PTE 2017-03 also requires each JPMC Affiliated QPAM to agree and warrant: (a) to indemnify and hold harmless Covered Plans for certain damages; and (b) not to require (or otherwise cause) Covered Plans to waive, limit, or qualify the liability of each JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions. Finally, PTE 2017-03 requires the JPMC Affiliated QPAMs to agree and warrant not to: (a) restrict the ability of Covered Plans to terminate or withdraw from their arrangement with the JPMC Affiliated QPAM, with the exception of reasonable restrictions disclosed in advance, as defined in PTE 2017-03; or (b)

impose any fees, penalties, or charges for such termination or withdrawal, with the exception of reasonable fees.

15. PTE 2017-03 contains extensive notice requirements that obligate the JPMC Affiliated QPAMs to provide Covered Plans with a notice of the QPAM's obligations under the exemption, a copy of the notice of the exemption as published in the *Federal Register*, a separate summary describing the facts that led to the Conviction (the Summary), and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14.

16. PTE 2017-03 also requires JPMC to designate a senior compliance officer (the Compliance Officer) to conduct an annual review to determine the adequacy and effectiveness of the implementation of the Policies and Training (the Annual Review). The Compliance Officer must prepare a written report for each Annual Review that, among other things, summarizes their material activities during the preceding year, sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action taken.

Current Exemption Request

17. On October 1, 2021, the Applicant filed an application for exemptive relief that would permit the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided under PTE 84-14 for a period

of four years from January 10, 2023 (the expiration of PTE 2017-03), through January 9, 2027 (the conclusion of the Section I(g) 10-year ineligibility period triggered by the Conviction). On February 7, 2022, the Applicant supplemented its application with the Second Audit Report. In support of its request, the Applicant states that: each of the JPMC Affiliated QPAMs and the JPMC Related QPAMs have complied with the conditions of PTE 2017-03 and, therefore, should be permitted to continue to rely upon PTE 84-14 through the remainder of the ineligibility period in order to avoid substantial costs and other disruptions that would occur if it no longer could rely on the exemption. The Applicant's representations regarding PTE 2017-03 compliance are addressed immediately below and its representations regarding costs to Covered Plans begins at paragraph 42 under the heading "Hardship to Plans."

Compliance with PTE 2017-03

18. Training. The Applicant represents that the JPMC Affiliated QPAMs developed and implemented a comprehensive Training program before the July 9, 2018, deadline specified in PTE 2017-03. Through a web-based e-learning training module, the Applicant requires the Training to be completed annually by relevant personnel of each JPMC Affiliated QPAM, including asset/portfolio management, trading, legal, compliance, and internal audit personnel, as required under PTE 2017-03. The Training is designed to track completion by

required participants and covers compliance with ERISA and the Code, including applicable ERISA fiduciary duty and prohibited transaction provisions. The Applicant updates the Training annually, as necessary, for clarity, accessibility, and legislative and regulatory changes.

19. Policies and Procedures. The Applicant represents that before the effective date of PTE 2016-15, each JPMC Affiliated QPAM developed and instituted a firmwide policy specifically addressing fiduciary responsibilities under ERISA and the Code (the ERISA Policies). The ERISA Policies cover a broad range of topics relevant to the JPMC QPAMs' management of Covered Plan assets, including ERISA's prohibited transaction rules, party in interest transactions, self-dealing and conflicts of interest, employer securities, and employer real property. The ERISA Policies also cover PTE 84-14, PTE 2017-03, the statutory exemption provided under ERISA Section 408(b)(2), recordkeeping and reporting obligations, and the applicability of the ERISA Policies to Covered Plans.

Each section of the ERISA Policies provides background information, identifies responsible parties, and describes objective requirements, internal practices, and reporting obligations. The ERISA Policies address compliance requirements for Covered Plans and assign responsibility for specific activities to relevant JPMC personnel. They further address PTE 2017-03's required content related to manager

independence, compliance with ERISA and the Code, communications with regulators, exemption compliance, corrections, and the Training. The ERISA Policies also feature cross-references to related policies, procedures, and compliance manuals, and are supplemented by a library of pre-existing firmwide, line of business-specific, and JPMC QPAM-specific policies and procedures on particular topics.

The ERISA Policies apply to all lines of business that engage in activities involving a JPMC Affiliated QPAM's exercise of investment discretion or provision of investment advice to plans and plan asset investment funds, or indirect service as an adviser or sub-adviser to a pooled investment vehicle deemed to hold the assets of Covered Plans. The Applicant represents that an electronic notice was sent to relevant JPMC Affiliated QPAM personnel regarding the availability of the ERISA Policies and that the ERISA Policies have been easily accessible on JPMC's intranet during the relevant period. The Applicant states that the ERISA Policies are reviewed annually and updated as necessary.

20. Internal Compliance Processes. The Applicant represents that the JPMC Affiliated QPAMs conducted a thorough review of their ERISA policies and procedures and implemented or augmented a variety of testing, monitoring, and reporting capabilities to ensure that they employ and follow robust and comprehensive compliance systems.

21. The Audits. PTE 2017-03 requires the JPMC Affiliated QPAMs to submit to an audit conducted annually by a prudently selected independent auditor to evaluate the adequacy of, and each JPMC Affiliated QPAM's compliance with, the Policies and Training requirements of the exemption. The JPMC Affiliated QPAMs have undergone two comprehensive audits performed by Newport Trust Company (Newport). Newport completed its first audit (covering July 10, 2018 through July 9, 2019) on January 9, 2020 (the First Audit). Newport completed its second audit (covering July 10, 2020 - July 9, 2021) on January 9, 2022 (the Second Audit). In conducting the audits, Newport states that it thoroughly analyzed the Policies and Training implemented by each JPMC Affiliated QPAM in connection with PTE 2017-03.

Auditor's Findings

22. The ERISA Policies. With respect to the ERISA Policies, Newport gathered information from JPMC through six separate data requests, reviewed the JPMC Affiliated QPAMs' obligations under ERISA and applicable Policies and Procedures, held discussions with JPMC personnel regarding existing internal governance structures (and how the Policies were uniquely tailored to accommodate individual JPMC Affiliated QPAMs' investment strategies), and tested the JPMC Affiliated QPAMs' operational compliance with the Policies.

In the First Audit, Newport determined that JPMC's ERISA Policies are "comprehensive in scope and adequately address all of the content required by PTE 2017-03." Based on its review, Newport, "determined that the JPMC QPAMs developed, implemented and maintained Policies in accordance with the conditions of the Exemption." In the Second Audit, Newport concluded that "[t]he ERISA Policy is comprehensive in scope and adequately addresses all of the content required by the Exemption." Newport identified no gaps or areas of insufficient coverage within the ERISA Policy and concluded that the ERISA Policy is clearly written and provides relevant personnel with an appropriate amount of information about each topic.

Newport also reviewed JPMC's firmwide and line of business-specific policies and procedures that supplement the ERISA Policy to better understand how the ERISA Policy fits within JPMC's broader governance structure. Newport concluded that the Policies, comprised of the ERISA Policy and these supplemental policies and procedures, provide JPMC personnel with clear guidance on relevant procedural requirements and extensive documentation related to the management of assets held by Covered Plans.

23. The Training. In its assessment of the Training, Newport states that it held discussions with JPMC personnel regarding the qualifications of the Training's developer and implementer, as well as the format, timing, and schedule for

the Training. Newport also reviewed the online course material and attendance records. Newport states that the JPMC Affiliated QPAMs developed and implemented a comprehensive Training program before the deadline specified in PTE 2017-03 and rolled out a web-based e-learning training module more than a year before the required deadline of July 9, 2018.

Newport further states that it reviewed the content of the Online Training Module and noted that, in compliance with the requirement specified in the ERISA Policies, the training covered: (a) the Policies; (b) ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions); (c) ethical conduct; (d) the consequences of not complying with the exemption conditions (including any loss of exemptive relief); and (e) prompt reporting of wrongdoing. During the period covered by the Second Audit, Newport states that based upon a comparison of enrollment records against completion records, the Training had a 99.89% attendance rate for the designated individuals.

24. Compliance with ERISA and the Code. Newport states that it selected individual prohibited transaction exemptions, principal transactions, proprietary investments, and record retention as focus areas for special scrutiny during the period covered by its audits. Newport notes that it identified the following issues.

25. Issue: PTE 2003-24 Compliance. Newport states that, on December 2, 2021, JPMC personnel disclosed to Newport an issue related to compliance with PTE 2003-24.¹⁶ As described by JPMC in a written summary to Newport, during a review of certain bank regulatory reporting requirements relating to affiliated transactions, JPMC's Asset Management Line of Business (AM) identified 19 new issuances,¹⁷ constituting approximately 2% of the 946 total new issuances that JPMC purchased on behalf of managed funds and accounts from July 2020 to June 2021, that were underwritten by an affiliate but not included on the respective 23B bank regulatory reporting.

Newport states that JPMC is remediating this PTE 2003-24 underreporting issue consistent with its correction procedures and past precedent by taking the following steps: (a) completing a review of affiliated transactions; (b) reviewing all issuances purchased by the asset manager on behalf of managed funds and accounts from July 2020 through June 2021 that were underwritten by an affiliate to confirm compliance with reporting requirements; (c) further

¹⁶ PTE 2003-24 permits the purchase of securities by an asset management affiliate of the applicant (JPMorgan Chase Bank) on behalf of employee benefit plans, including those investing in a pooled fund, for which the applicant acts as a fiduciary, from any person other than the applicant or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the affiliated broker-dealer is a manager or member of such syndicate, and/or where an affiliated trustee serves as trustee of a trust that issued the securities (whether or not debt securities) or serves as indenture trustee of securities that are debt securities.

¹⁷ The JPMC asset manager subsequently reviewed its quarterly PTE 2003-24 reporting during the same period and determined that 12 of the 19 new issuances were reported but 7 were not reported.

analyzing exceptions to determine the root cause, identifying and implementing procedural enhancements, and considering any redress as applicable and necessary; and (d) re-issuing relevant PTE 2003-24 quarterly reporting per the asset manager's internal procedures for reporting affiliated transactions with an explanation to the impacted Covered Plans.

Based on its evaluation, Newport determined that AM complied with the ERISA Policies and line of business-specific procedures with respect to PTE 2003-24 for transactions involving Covered Plans during the period covered by the audit. Newport states that it intends to follow up to confirm that the proposed remediation was implemented as planned.

26. Issue: Fee Offsetting Issues. Newport states that representatives from JPMC's Private Banking line of business (PB) identified three separate issues related to the offsetting process for Covered Plans invested in proprietary investment products. On July 28, 2020, JPMC notified Newport that PB had identified gaps in the fee offsetting process during a historical review of the firm's fee offsetting process conducted in late 2019. The review identified two primary gaps: (a) a failure to flag certain proprietary funds as fee offset eligible in the relevant systems and therefore not providing the relevant monthly information regarding fee offsets; and (b) a failure to set

up certain accounts for fee offsetting. The review encompassed approximately 100,000 Covered Plans dating back to 2012 and identified 753 accounts that were impacted.

Newport states that, before 2013, account coding errors were more frequent because portfolio managers had to go through a manual process to make sure account coding was set up for fee offsetting. After the implementation of enhancements in 2013, the fee offset coding was automatically applied to accounts identified as Covered Plans. In addition, PB now performs weekly checks to ensure that all new Covered Plans are fee offset eligible. With these enhancements, JPMC determined that no further changes to the fee offsetting process were needed.

Newport states that PB Operations led the remediation process, identified impacted accounts, calculated the amounts owed to each client (the amount of fees that were not offset plus an interest charge for lost earnings calculated using the Department's VFCEP Calculator), and notified clients. Newport also notes that PB fully credited all impacted client accounts and prepared an excise tax filing.

27. JPMC identified two other PB issues related to fee offsetting for proprietary investments and communicated those issues to Newport on December 2, 2021. While preparing a response to one of Newport's inquiries regarding the fee offsetting process for Sample Accounts, PB representatives

identified an issue with one proprietary exchange traded fund (ETF) held in one of the Sample Accounts that closed in the middle of a month during the period covered under the Second Audit. PB conducted a review of all Covered Plans that had closed mid-month and held ETFs and escalated the issue with legal, compliance, and operations leadership.

Newport states that JPMC detected an error in the process for calculating offset amounts associated with proprietary ETFs held at the time accounts are closed, and that this issue has persisted since July 2018 when proprietary ETFs were first launched for use in managed accounts. Specifically, the Closed Account Report used to determine the credit amount owed to accounts that closed mid-month and that held proprietary funds showed certain issues.

PB conducted an analysis of all Covered Plans managed by PB that closed mid-month between July 2018 and September 2021. PB's analysis found that over 550 accounts were under-credited for an aggregate amount of approximately \$4,500 and that over 1,400 accounts were over-credited for an aggregate of approximately \$144,000. PB representatives notified Newport that the Closed Account Report has been corrected to ensure accuracy going forward, and that PB is currently calculating the total impact of the fee offset amounts owed (including lost earnings), determining the approach for crediting accounts, developing a plan for communication with

clients and advisors for affected accounts, and preparing an excise tax filing. Newport plans to follow up on the anticipated timing of the remediation process and has requested that PB update Newport throughout the remediation process.

28. Another issue was identified on August 9, 2021, when an investor notified the PB fee billing team of a discrepancy in its client's advisory fee calculation. Upon further analysis, the PB team discovered that while the proprietary fund fee offset had been correctly applied when the account was initially billed, the offset was not reapplied following an update to (*i.e.*, recalculation of) the previously calculated fee. The issue arose when a coding change was made following a conversion from an old fee to a new billing program in March 2020. This resulted in offsets no longer being applied when there was a rebilling of an incorrect advisory fee after onboarding.

PB representatives conducted a review of all Covered Plans that had a fee update between September 2018 and July 2021 and calculated a preliminary impact of approximately \$2,000 across 80 accounts.¹⁸ PB representatives notified

¹⁸ With respect to this last issue, the Applicant represents that PB did not choose September 2018 as a beginning date for their search. In March 2020, the functionality that enabled an advisory fee to be recalculated was migrated from one system to another. In connection with this migration, the functionality was not implemented correctly in the new system. Thus, as of March 2020, when an advisory fee was recalculated, the offset was not included in the recalculated fee. Once this system issue was discovered, PB reviewed all accounts that had an advisory fee that was updated/recalculated between March 2020 and July 2021, the period during which the functionality was faulty. The

Newport that the fee billing group has corrected the program to ensure that all future fee updates include the required offset. PB is currently calculating the total impact of the offset amounts owed (including lost earnings), determining the approach for crediting accounts, developing a plan for communication with clients and advisors for affected accounts, and preparing an excise tax filing.

Newport states that it plans to follow up on the anticipated timing of the remediation process and has requested that PB update Newport throughout the process. Based on Newport's assessment, PB self-identified several issues related to fee offsetting for proprietary investment products and promptly took steps to remediate those issues in accordance with its correction procedures. Therefore, Newport did not find any instances of noncompliance related to proprietary investment products within PB during the period covered by PTE 2017-03. However, given the multiple issues that have been identified above, Newport recommended that PB perform a comprehensive assessment of its existing fee offsetting processes.

Deferred Prosecution Agreement

29. On September 29, 2020, JPMC, JPMorgan Chase Bank and J.P. Morgan Securities LLC (JPMS) entered into a deferred prosecution agreement with the Department of

earliest dated invoice that required rebilling through the new system - and thus impacted by the defective system migration and functionality - was from September 2018.

Justice (the DPA).¹⁹ As required by the conditions of PTE 2017-03, JPMC provided written notification to the Department regarding the DPA on that date. In response to a request for information from Newport, and as set forth in the DPA, JPMC stated that between 2008 and 2016, former employees of JPMC and JPMS who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, engaged in trading practices known as "spoofing", in which the traders placed orders to buy or sell precious metals or U.S. Treasury futures contracts, or U.S. Treasury notes and bonds in the secondary cash market with the intent to cancel those orders before execution in an effort to manipulate the market in those instruments.

30. The Applicant represents that there is no connection between the lines of business that manage assets through QPAMS in reliance on PTE 84-14 and the conduct cited in the DPA. JPMC, as a firm, conducts discretionary investment management activities through various lines of business that engage in relevant transactions through several JPMC legal entities. JPMorgan Chase Bank, NA is the legal entity that manages cash collateral related to the securities lending sub-line of business. Accordingly, JPMorgan Chase Bank, NA is the QPAM in this instance, and it may rely on PTE 84-14 to manage such cash collateral.

¹⁹ The CFTC and SEC announced separate settlements in connection with related, parallel proceedings on the same date as the DPA.

While all JPMC personnel ultimately report to common senior leadership at some level, the Agency Securities Finance business (i.e., the asset management business) is distinct from the Global Markets business (including the business groups that comprise the Precious Metals and U.S. Treasuries Desks), and each such business has separate heads and dedicated compliance and internal staff.²⁰ The Applicant states that the control functions have dedicated personnel covering Agency Securities Finance, and those individuals do not perform those services for the Global Markets Division, including the Precious Metals and U.S. Treasuries Desks within that division. Ultimately, these control function personnel report up to common senior leadership at some level.

31. The Applicant represents that, to the best of its knowledge, there have been no instances where JPMC QPAMs entered into trades for Covered Plans with the Precious Metals or U.S. Treasuries Desks. Accordingly, the spoofing activity referred to in the DPA should not have directly impacted any such Covered Plans. Further, JPMC states that it is not aware of any impact to Covered Plans from the conduct underlying the DPA. JPMC, however, states that the

²⁰ All CIB Compliance function personnel roll up to the CCO for CIB, and all firm-wide Compliance function personnel roll up to the JPMorgan Global Chief Compliance Officer, who reports to the firm's Chief Risk Officer. Similarly, business-aligned Internal Audit function personnel roll up to the Chief Auditor-CIB and ultimately to the General Auditor of JPMC. In addition, some surveillance, monitoring, and testing functions utilize centralized resources and personnel within Compliance, and business-aligned Compliance personnel collaborate with other stakeholders across the firm across many lines of business.

activities described in the DPA may have had an indirect impact on participants in the markets at issue, regardless of whether such market participants had traded with the Precious Metals and U.S. Treasuries Desks.

32. Newport states that the trading conduct cited in the DPA ceased in 2016, before the Audit periods covered under PTEs 2016-15 and 2017-03. In addition, JPMC confirmed to Newport that, to its knowledge, none of the JPMC Affiliated QPAMs traded directly with the CIB Global Markets Precious Metals or U.S. Treasuries Desks during the period between 2008 and 2016, nor do they today. JPMC states that it has found no evidence of direct impact to Covered Plans managed on a discretionary basis by JPMC QPAMs during the period cited in the DPA. JPMC also stated that Covered Plans were not found to have been affected in connection with precious metals barrier options transactions.

33. Newport requested information regarding the structure and functions of the JPMC compliance and internal audit controls pertaining to the activities described in the DPA to determine whether oversight measures are sufficient to prevent and detect future similar activities. Based on its review, Newport concluded that the trading and market conduct and personnel that are the subject of the DPA did not have any direct bearing on the activities of the JPMC Affiliated QPAMs subject to the Audits and that JPMC took measures designed to enhance oversight and controls, prevent

the occurrence of similar future conduct, and detect any issues relating to trading activities cited in the DPA.

Compliance with other Conditions of PTE 2017-03

34. Newport determined that the JPMC QPAMs did not participate in the Criminal Misconduct that is the subject of the Conviction.²¹ Rather, the Criminal Misconduct was the action of one trader working in the FX trading business of JPMorgan Chase Bank who did not work at any time for a fiduciary line of business within JPMC. Newport determined further that there was no indication that the Criminal Misconduct related to any identified transaction involving Covered Plans nor did any JPMC QPAM personnel participate in such activities or receive remuneration in connection with them. Newport further determined that the JPMC QPAMs did not employ or knowingly engage the individual that participated in the Criminal Misconduct.

35. The conditions of PTE 2017-03 require Newport to determine that filings or statements made by the JPMC QPAMs to regulators, including but not limited to the Department, the Treasury, the DOJ, and the PBGC, on behalf of or in relation to Covered Plans, are materially accurate and complete. Based on its review of regulator communications, Newport determined that the JPMC QPAMs followed their ERISA

²¹ As noted earlier, the Criminal Misconduct is in connection with FX spot market manipulation in violation of the Sherman Antitrust Act, 15 U.S.C. §1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15-cr-79-SRU).

Policies in accordance with the communications requirements of PTE 2017-03.

36. Condition I(d) of PTE 2017-03 provides that JPMC must not use its authority or influence to direct any investment fund subject to ERISA or the Code and managed by a JPMC QPAM with respect to one or more Covered Plans to enter into any transaction with JPMC, or to engage JPMC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. Newport determined that JPMC has met its obligations in these regards.

37. Based on its review of the client documentation and representations made by JPMC personnel, Newport determined that the JPMC Affiliated QPAMs have complied with the various contractual requirements specified in Section I(j) of PTE 2017-03. Newport also determined that the JPMC Affiliated QPAMs have complied with the communication requirements of Section I(k) of PTE 2017-03.

38. With regard to the Compliance Officer requirements of PTE 2017-03, Newport states that in April 2018, JPMC designated David S. Villwock, JPMC's Head of Firmwide Fiduciary Compliance, to serve as the Compliance Officer for purposes of PTE 2017-03. Newport states that Mr. Villwock has the requisite experience with, and knowledge of, the

regulation of financial services and products (including under ERISA and the Code) and has a direct reporting line to JPMC's highest-ranking corporate officer in charge of legal compliance for asset management. Newport concludes that, with the appointment of Mr. Villwock as the Compliance Officer, JPMC complied with the relevant requirements of PTE 2017-03.

39. PTE 2017-03 also requires Newport to assess the adequacy of the Annual Review conducted by the Compliance Officer. Newport states that Mr. Villwock conducted an Annual Review for the most recent twelve-month period that ended on January 9, 2021, which was memorialized in an Annual Report provided to Newport on April 8, 2021. Based on its review, Newport determined that: (a) the Annual Report covers all of the content required under PTE 2017-03; (b) Mr. Villwock provided the required written certifications regarding the Annual Report; and (c) the recipients of the Annual Report included the appropriate corporate officers of JPMC and each JPMC QPAM to which such report relates. Further, Newport found that the Annual Report was thorough and effectively leveraged JPMC's existing compliance apparatus.

40. Newport determined that the JPMC Affiliated QPAMs' record retention activities were operationally compliant with Section I(n) of PTE 2017-03 and with JPMC's Record Management Policies.

41. Newport states that it did not find any instance where a client contract specifically contradicted the requirements of Section I(j)(7) of PTE 2017-03. In this regard, Newport notes that JPMC provided a copy of the Supplement to Account Agreement found on JPMC's client portal, which specifically incorporates the contract requirements set out in Section I(j) of PTE 2017-03. Newport states that JPMC representatives confirmed that the JPMC Affiliated QPAMs provided notice to Covered Plan clients informing them that a Supplement to Account Agreement was available through its client portal, prior to July 9, 2018.

Hardship to Covered Plans

42. The Applicant represents that if the Department declines to grant this proposed exemption, there would be adverse consequences for ERISA-covered plans, public plans, and IRAs. In the absence of exemptive relief, the JPMC Affiliated QPAMs may be unable to manage, or manage as efficiently, the strategies for which they have contracted with thousands of Covered Plans. Further, Covered Plans desiring to withdraw from their arrangements could incur significant transaction costs as well as costs associated with finding new managers and reinvesting assets with those new managers. The Applicant states that the transaction costs associated with changing managers are significant, especially in many of the strategies employed by the JPMC Affiliated QPAMs. In this regard, the cost of liquidating assets, identifying and selecting new managers, and reinvesting assets would be borne by the Covered Plans and their participants.

43. The Applicant states that, if the Department denies the exemption request, transactions currently dependent on

PTE 84-14 or where PTE 84-14 was the counterparty's expected relief, could be in default and terminated at a significant cost to Covered Plans. According to the Applicant, Covered Plans that decide to retain the JPMC Affiliated QPAMs as their asset manager could be prohibited from engaging in certain potentially beneficial transactions such as hedging transactions using over-the-counter options or derivatives. The Applicant states that counterparties to such transactions are far more comfortable with the QPAM Exemption than any other currently available exemption, and the unavailability of the QPAM Exemption could trigger a default or early termination by a Covered Plan or pooled trust.

44. The Applicant represents that in the event of an exemption denial, certain derivatives transactions and other contractual agreements automatically and immediately could be terminated without notice or action or could become subject to termination upon notice from a counterparty in the event the Applicant no longer qualifies for relief under the QPAM Exemption

45. The Applicant represents that some of its strategies tend to be less liquid than others and, thus, the transition costs would be significantly higher than, for example, liquidating a large-cap equity portfolio. Real estate is an example of a strategy that could experience significant disruption without the QPAM Exemption. Clients

of the JPMC Affiliated QPAMs have over \$38.9 billion in ERISA and public plan assets in commingled funds that are invested in real estate strategies, with approximately 224 holdings. Many transactions in these accounts rely on Parts I, II, and III of the QPAM Exemption as a backup to the collective investment fund exemption²² (which may become unavailable to the extent a related group of plans has a greater than 10% interest in the collective investment fund). The Applicant estimates that there could be a significant loss in value if assets had to be quickly liquidated. In that instance, the QPAM may end up having to sell assets at a discount of more than 10% of their carrying price, which is pegged at FMV. There could also be prepayment penalties on the financing of these assets.

46. The Applicant further asserts that JPMC Affiliated QPAMs rely on the QPAM Exemption when buying and selling fixed income products. Stable value strategies, for example, rely on the QPAM Exemption to enter into wrappers and insurance contracts that permit the assets to be valued at book value. Many counterparties specifically require a representation that the QPAM Exemption applies, and those contracts could be in default if the requested exemption were not granted. Depending on the market value of the assets in these funds at the time of termination, such

²² 56 FR 31966 (July 12, 1991).

termination could result in losses to the stable value funds.

47. The Applicant states that as of March 31, 2021, approximately 500 accounts managed through the JPMC Affiliated QPAMs (including commingled funds and separately managed accounts) invest in fixed income products with a total portfolio of approximately \$100 billion in market value of ERISA and public plan assets in commingled funds. If the QPAM Exemption were lost, the Applicant estimates that its clients' costs of approximately could incur average weighted liquidation 50-75 basis points of the total market value in fixed income products. While money markets and short and intermediate term bonds could be liquidated for between 5-50 basis points, long duration bonds may be more difficult to liquidate, and liquidation costs may range from 75-100 basis points. Further, the liquidation costs for high-yield and emerging market investments could range from 75-150 basis points.

The Applicant notes that not all JPMC QPAM investment strategies exclusively rely upon the QPAM exemption for prohibited transaction relief. In fact, for equities, foreign exchange, and publicly traded bond strategies, the JPMC Affiliated QPAMs have other exemptions upon which they can rely. In the case of public bonds, the JPMC Affiliated QPAMs can rely upon class exemption 75-1 Part II and the statutory exemption under ERISA Section 408(b)(17).

48. While equity purchases in the market are not necessarily made in reliance on the QPAM Exemption, such strategies often use derivatives, foreign exchange (for non-U.S. strategies), and other products that require the QPAM Exemption. The Applicant manages over \$50 billion in ERISA and public plan assets in equity strategies within the Applicant's Asset Management business that could suffer different liquidation costs depending on the strategy. On average, for all equity strategies, the liquidation costs for a 30-day liquidation timeframe might range from 40-80 basis points.

49. Agency securities lending is a business within JPMorgan Chase Bank that makes loans of securities owned by clients, including Covered Plans, secured by cash collateral. JPMorgan Chase Bank acts as investment manager for such cash and invests it in short-term instruments. The cash collateral is maintained in 32 separately managed accounts with total ERISA assets under management of approximately \$3.9 billion.²³ JPMorgan Chase Bank may rely on the QPAM Exemption with respect to the investment of cash collateral for its agency securities lending business. The Applicant believes that many brokers and counterparties with whom JPMorgan Chase Bank deals in regard to cash collateral investments rely on JPMorgan Chase Bank's QPAM status, because of the prevalence of the QPAM Exemption as the

²³ As of June 2021.

industry standard exemption. If the QPAM Exemption were unavailable, such brokers and counterparties could be reluctant to continue doing business with Covered Plans.

50. Many accounts managed by the JPMC Affiliated QPAMs are similarly invested in hedging instruments to deal with the risk of currency exposure for investments in foreign markets. For example, the JPMC Affiliated QPAMs engage in foreign exchange swap transactions and in foreign exchange spot and forward transactions to hedge against fluctuations in foreign exchange rates, for speculative or other alpha-seeking purposes, to settle trades in foreign securities, and for other reasons. The Applicant represents that it would not be in the interests of Covered Plans to be invested in global strategies without being able to hedge currency risk or otherwise engage in foreign exchange transactions. While there may be other exemptions upon which to rely, the market and regular counterparties may choose to rely on the QPAM Exemption and refuse to trade or price the trade accordingly for any greater risk they foresee in the absence of that exemption.

Applicant's Requested Modifications

52. With its exemption request, the Applicant requested that this exemption incorporate certain modifications relative to the conditions of PTE 2017-03. These modification requests and the Department's responses to them are described in further detail below.

53. Newly Acquired Asset Managers. The Applicant represents that from time to time, JPMC acquires asset managers that could rely on PTE 84-14. According to the Applicant, it would be nearly impossible for such managers to come into full compliance with PTE 2017-03 or this proposed exemption before any such acquisition closes considering all the conditions regarding notices, training, policies, and compliance regimes. Where the Applicant acquires a new asset manager that already has its own plan clients for which it is using the QPAM Exemption as of the closing date of the transaction, in the absence of relief, that manager needs to comply with the terms of the individual QPAM exemption immediately. Where the new asset manager is not in immediate compliance, Covered Plan clients of the new asset manager with swaps ongoing might have to terminate them immediately, and new transactions could not be consummated, because the new asset manager is not in compliance on day one with all of the conditions of the exemption (e.g., contractual obligations and other investment management agreement amendments; distribution of exemption notice, statement and policy summary; drafting of policies and procedures; training; and feasibility of audit coverage).

The Applicant states that the process of integrating an acquired company can take many months or years. The company being acquired does not in the normal course adopt policies,

train on those policies, or interfere with existing client communications or agreements before the acquisitions close, particularly when the acquirer is a large and complex financial institution such as the Applicant. According to the Applicant, it is not free to communicate with a target's clients until after the closing, nor can it communicate with a target's employees, directors, officers, or agents to cause them to draft or adopt policies, procedures, or training. Therefore, the Applicant requests that the conditions of this proposed exemption would not apply until a date that is six months after the closing date for an acquisition.²⁴

Department's Response: The Department is unable to make the requested change without detailed information regarding the specific conditions implicated by the requested change, and an explanation regarding why six months is an appropriate extension period.

54. Training Conducted Electronically. The Applicant requests confirmation from the Department that the Training may be conducted electronically or via a website. In reliance on a prior clarification from the Department, the JPMC Affiliated QPAMs have been utilizing a web-based training tool that the Auditor has already deemed sufficient

²⁴ The Applicant further states that, the acquired manager would continue to rely on PTE 84-14 during that six-month period, which could be used to provide the necessary notices to the new affiliate's clients, to provide training to the new affiliate's employees, to make sure that systems are in place to implement the ERISA policies, etc.

to provide JPMC Affiliated QPAM personnel with adequate training in compliance with PTE 2017-03.

Department's Response: The Department confirms the Applicant's request that the Training of JPMC personnel may be conducted either electronically or via a website.

55. Timing of the Training. The Applicant requests that the Department change the timing of the Training to once per calendar year ending on December 31 as opposed to once every twelve months ending on July 9, with the last training required during calendar year 2026. The Applicant states that doing so will enable the JPMC Affiliated QPAMs to measure compliance with the training requirement as of year-end (as opposed to July 9). Per this request, relevant personnel would be required to complete a Training under PTE 2017-03 by July 9, 2022, and the next training would be completed under this proposed exemption by December 31, 2023. Future Trainings would be required by December 31, 2024, 2025, and 2026.

Department's Response: The Department declines to make the Applicant's requested change, which would result in approximately 18 months between deadlines for annual Training, without justification that the requested change is equally protective of Covered Plans as the current annual training requirement.

56. Flexibility to Abbreviate the Training for Returning Learners. The Applicant requests confirmation that

the content of Training need not be the same for new learners as for JPMC Affiliated QPAM personnel who have previously demonstrated proficiency with the subject matter of the Training. The Applicant states that: (a) the Training fully covers the subject matter required under PTE 2017-03 in significant detail and concludes with a knowledge assessment; (b) the Training has been administered for several years now; and (c) tenured employees have demonstrated comprehension of the subject matter by successfully completing the assessment. Accordingly, the Applicant requests confirmation that less detailed training can be used for personnel who have completed the full Training and successfully completed the accompanying assessment in a prior year.

Department's Response: The Department declines to make this requested change because the Applicant has not sufficiently demonstrated that less detailed Training for relevant JPMC personnel would be equally protective of Covered Plans as the training described in this proposed exemption.

57. Notification Requirements. If this proposed exemption is granted, the Applicant must provide a Notice to Interested Persons (NTIP) to Covered Plan clients shortly after the proposed exemption is published in the *Federal Register*. The Applicant requests clarification that the NTIP

requirement will be deemed met for each Covered Plan client via notice by *Federal Register* publication.

To the extent that the Department is unwilling to grant this request, the Applicant requests clarification that the NTIP requirement will be deemed met for each Covered Plan client by posting the required NTIP materials on the JPMC Affiliated QPAM or JPMC Related QPAM's website where the notice of obligations under PTE 2017-03 (Section I(j)(7)), and notice of the Exemption (Section I(k)), are currently posted provided such website is updated, as necessary, within 15 days of the publication of this exemption in the *Federal Register*.

In addition, with respect to the Notice requirements of this exemption, the Applicant requests clarification that such requirements will be deemed met for each Covered Plan client that received the equivalent notifications pursuant to PTE 2017-03, provided the website currently containing the materials stipulated is updated, as necessary, by May 10, 2023 (four months following the effective date of this exemption, if granted). Accordingly, such clients would not need to be notified again pursuant to this proposed exemption.

Department's Response: The Department declines to make the requested changes. The Applicant has not demonstrated that simply updating a website without sending a corresponding notification of the update to Covered Plans

would represent adequate notice. Without a corresponding notice that directs Covered Plans to access the website, certain Covered Plans may never become aware that a new proposed exemption has been published.

58. New Covered Plan Clients. The Applicant represents that it is likely that many clients that retain the JPMC Affiliated QPAMs shortly after the effective date of this proposed exemption (January 10, 2023) would enter into investment management or comparable agreements with the JPMC Affiliated QPAMs that continue to include notification language referencing PTE 2017-03 and a link to the required materials thereunder. As the Department did through e-mail clarification when PTE 2017-03 was published, the Applicant requests clarification that it would meet the notification requirements in this exemption for such clients that first become Covered Plan clients on or after January 10, 2023, but before May 10, 2023, to the extent the investment management or comparable agreements with the JPMC Affiliated QPAMs include notification language referencing PTE 2017-03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in this proposed exemption, if granted is updated, as necessary, by May 10, 2023. The Applicant expects that clients that first become Covered Plan clients on or after May 10, 2023, would enter into agreements with the JPMC Affiliated QPAMs that include notification language

specifically referencing this exemption including links to the updated website containing the materials stipulated under such conditions.

Department's Response: The Department concurs with the Applicant's request regarding clients that first become Covered Plan clients on or after January 10, 2023, but before May 10, 2023.

59. Audit and Compliance Officer Annual Review Timing. The Applicant requests that the Department change the timing of the final two audits to begin on July 1, rather than July 10. The Applicant states that this change would enable the Auditor to request data and other necessary information as of the end of calendar quarters, facilitating the JPMC Affiliated QPAMs' ability to readily gather and deliver such material. The Applicant also requests the beginning of the Compliance Officer's Annual Review period to be delayed nine days, from January 1 to January 10.

Department's Response: The Department concurs with the Applicant's requests regarding the start date of the audit and the start date of the Compliance Officer Annual Review.

60. Auditor Cooperation. The Applicant states that continued relief under this exemption should not be conditioned upon the Auditor cooperating with, or disclosing workpapers to, the Department. The Applicant states that neither the JPMC Affiliated QPAMs nor Covered Plans can control the Independent Auditor's actions in this regard.

Department's Response: The Department declines to make this requested revision. JPMC should make every effort to ensure that the Auditor fully cooperates with the Department. The Department, also, is unaware of any instance where an Auditor failed to fully cooperate with the Department in connection with a QPAM Section I(g) audit.

61. Definition of Covered Plan. The Applicant requests clarification that a JPMC QPAM may include a disclaimer in a modification of a contract, arrangement, or agreement with a Covered Plan as follows: "Notwithstanding the above, a JPMC Affiliated QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where the modification is made in a bilateral document signed by the client, the client's attention is specifically directed toward the disclaimer, and the client is advised in writing that, with respect to any transaction involving the client's assets, the JPMC Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14."

Department's Response: The Department concurs with the Applicant's requested change.

62. Section I(j) requires each JPMC Affiliated QPAM to provide a notice of its obligations under that section to each Covered Plan. The Applicant requests the Department's confirmation that this condition would be met where the JPMC

Affiliated QPAM previously agreed to the same obligations required by Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan.

Department's Response: The Department confirms that this condition would be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan.

Additional Changes to the Exemption's Conditions

63. Since granting PTE 2017-03, the Department has clarified and updated certain conditions included in QPAM Section I(g) exemptions to enhance protections for Covered Plans. These updated conditions appear in Sections III(a) and (b) of this proposed exemption.

Proposed Exemption's Protective Conditions

64. In developing administrative exemptions under ERISA Section 408(a), the Department implements its statutory directive to grant only exemptions that are appropriately protective and in the interest of affected plans and IRAs. The Department is proposing this exemption with conditions that would protect Covered Plans (and their participants and beneficiaries) and allow them to continue to utilize the services of the JPMC Affiliated and Related QPAMs. If this proposed exemption is granted as proposed, it would allow

Covered Plans to avoid costs and disruptions to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager because the JPMC Affiliated and Related QPAMs no longer are able to rely on the relief provided by PTE 84-14 due to the Conviction.

65. The Department notes that the protective conditions of this proposed exemption are essentially the same as the protective suite of conditions set forth under PTE 2017-03, with certain modifications for consistency with the Department's more recent individual exemptions relating to Section I(g) of PTE 84-14. Given the seriousness of the misconduct described in the DPA discussed above, the Department is adding two new conditions. The first provides that, other than former employees who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection

with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the DPA.

The second provides that, apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA.

Statutory Findings

66. Based on the conditions included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

67. The Proposed Exemption is "Administratively Feasible." The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, a qualified independent auditor would be required to perform an in-depth audit covering each JPMC Affiliated QPAM's compliance with the terms of the exemption, and a corresponding written audit report would be provided to the Department and made available to the public. The Department notes that the independent audit would incentivize compliance while reducing the immediate need for review and oversight by the Department.

68. The Proposed Exemption is "In the Interest of the Covered Plans." The Department has tentatively determined that the proposed exemption would be in the interests of the participants and beneficiaries of affected Covered Plans. It is the Department's understanding, based on representations from the Applicant, that if the requested exemption is denied, Covered Plans may be forced to find other managers at a potentially significant cost. According to the Applicant, ineligibility under Section I(g) of PTE 84-14 would deprive the Covered Plans of the investment management services that these plans expected to receive when they appointed these managers. In this regard, an exemption denial could result in the termination of relationships that the fiduciaries of the Covered Plans have determined to be in the best interests of those plans.

69. The Proposed Exemption Is "Protective of the Plan."

The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of Covered Plans. As described above, the proposed exemption is subject to a suite of conditions that include, but are not limited to: (a) the development and maintenance of the Policies; (b) the continued implementation of the Training; (c) a robust audit conducted by a qualified independent auditor; (d) the provision of certain agreements and warranties on the part of the JPMC Affiliated QPAMs; (e) specific notices and disclosures that inform Covered Plans of the circumstances necessitating the need for exemptive relief and the JPMC Affiliated QPAMs' obligations under this exemption; and (f) the designation of a Compliance Officer who must ensure the JPMC Affiliated QPAMs continue to comply with the Policies and Training requirements of this exemption.

Summary

70. This proposed exemption would provide relief from certain of the restrictions set forth in ERISA Section 406 and Code Section 4975(c)(1). No relief or waiver of a violation of any other law would be provided by this proposed exemption. The relief set forth in this proposed exemption would terminate immediately if, among other things, an entity within the JPMC corporate structure were convicted of any crime covered by Section I(g) of PTE 84-14

(other than the Conviction). While such an entity could request a new individual prohibited transaction exemption in that event, the Department is not obligated to grant such request. Consistent with this proposed exemption, the Department's consideration of additional exemptive relief is subject to the findings required under ERISA Section 408(a) and Code Section 4975(c) (2) .

71. When interpreting and implementing this exemption, the Applicant and the JPMC Affiliated QPAMs should resolve any ambiguities in light of the exemption's protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA's Office of Exemption Determinations at 202-693-8540.

72. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA Section 408(a) and Code Section 4975(c) (2) .

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within thirty (30) days of the publication of the notice of proposed four-year exemption in the *Federal Register*. The notice will be provided to all interested persons in the manner approved by the Department

and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within sixty (60) days of the date of publication of this proposed four-year exemption in the *Federal Register*. All comments will be made available to the public.

Warning:

If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and/or Code Section

4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B); nor does it affect the requirement of Code Section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA Section 408(a) and/or Code Section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The proposed exemption would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times, and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

Proposed Exemption

The Department is considering granting a four-year exemption under the authority of ERISA Section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2), and in accordance with the procedures set forth in exemption procedure regulation.²⁵

SECTION I. DEFINITIONS

(a) The term "Conviction" means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. §1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15-cr-79-SRU). For all purposes under this exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses the conduct

²⁵ 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

described in Paragraph 4(g)-(i) of the Plea Agreement filed in the District Court in case number 3:15-cr-79-SRU (the Plea Agreement).

(b) The term "Covered Plan" means a plan subject to Part IV of Title I of ERISA (an "ERISA-covered plan") or a plan subject to Code section 4975 (an "IRA"), in each case, with respect to which a JPMC Affiliated QPAM relies on PTE 84-14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Further, a JPMC Affiliated QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where the modification is made in a bilateral document signed by the client, the client's attention is specifically directed toward the disclaimer, and the client is advised in writing that, with respect to any transaction involving the client's assets, the JPMC Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14.

(c) The term "Exemption Period" means January 10, 2023, through January 9, 2027.

(d) The term "JPMC" means JPMorgan Chase and Co.

(e) The term "JPMC Affiliated QPAM" means a "qualified professional asset manager," as defined in Section VI(a) of PTE 84-14, that relies on the relief provided by PTE 84-14 or represents to Covered Plans that it qualifies as a QPAM, and with respect to which JPMC is a current or future "affiliate" (as defined in Section VI(d)(1) of PTE 84-14). The term "JPMC Affiliated QPAM" excludes the parent entity, JPMC, the entity implicated in the criminal conduct that is the subject of the Conviction.

(f) The term "JPMC Related QPAM" means any current or future "qualified professional asset manager" (as defined in section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to whom JPMC owns a direct or indirect five percent or more interest but is not an "affiliate" (as defined in Section VI(d)(1) of PTE 84-14).

SECTION II. COVERED TRANSACTIONS

Under this proposed exemption, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections I(e) and I(f), respectively, would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14 or the QPAM

Exemption) notwithstanding the Conviction, as defined in Section I(a), during the Exemption Period,²⁶ provided that the conditions set forth in in Section III below are satisfied.

SECTION III. CONDITIONS

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, nor exercised any authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction. For purposes of this proposed exemption,

²⁶ Section I(g) of PTE 84-14 generally provides relief only if "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

"participate in" refers not only to active participation in the criminal conduct of JPMC that is the subject of the Conviction, but also to knowing approval of the criminal conduct or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and to the Board of Directors;

(b) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Conviction;

(c) The JPMC Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction.

(d) At all times during the Exemption Period, no JPMC Affiliated QPAM will use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM in reliance on PTE 84-14, or with respect to which a JPMC Affiliated QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM class exemption, to enter into any transaction with JPMC, or to engage JPMC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or Code Section 4975 (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause the JPMC Affiliated QPAM, the JPMC Related QPAM, or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, JPMC will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) and (C), with respect to Covered Plan assets; provided, however, that JPMC will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA Section 3(21)(A)(ii) or Code Section 4975(e)(3)(B);

(h)(1) Each JPMC Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC;

(ii) The JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the JPMC Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM's knowledge at that time;

(v) To the best of the JPMC Affiliated QPAM's knowledge at the time, the JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The JPMC Affiliated QPAM complies with the terms of this exemption; and

(vii) Any violation of or failure to comply with an item in subparagraphs (ii) through (vi) is corrected as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the general counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor

responsible for reviewing compliance with the Policies. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each JPMC Affiliated QPAM must continue to implement a training program (the Training) conducted at least annually for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training required under this exemption may be conducted electronically and must: (i) at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and (ii) be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption;

(i) (1) Each JPMC Affiliated QPAM must submit to an audit conducted every two years by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of and each JPMC Affiliated QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2022, through July 9, 2023, and must be completed by December 31, 2023. The second audit must cover the period from July 1, 2024, through June 30, 2025, and must be completed by December 31, 2025. The third audit must cover the period from July 1, 2026, through January 9, 2027, and must be completed by July 8, 2027;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each JPMC Affiliated QPAM and, if applicable, JPMC, will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by state or federal statute, or involves communications subject to attorney client privilege and may

be limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each JPMC Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each JPMC Affiliated QPAM's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for each QPAM, a sample of the QPAM's transactions involving Covered Plans sufficient in size and nature to afford the auditor a reasonable basis to determine the QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period for completing the audit described in Section I(i)(1), the auditor must issue a written report (the Audit Report) to JPMC and the JPMC Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. At its discretion, the auditor may issue a single consolidated Audit Report that covers all the JPMC Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of each JPMC Affiliated QPAM's Policies and Training; each JPMC Affiliated QPAM's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of the respective JPMC Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The JPMC Affiliated QPAM must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective JPMC Affiliated QPAM. Any action taken, or the plan of action to be taken, by the respective JPMC Affiliated QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating

noncompliance. In this last regard, any finding that a JPMC Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section I(m);

(6) The auditor must notify the respective JPMC Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the JPMC Affiliated QPAM with respect to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption and that to the best of such officer's knowledge at the time, the JPMC

Affiliated QPAM has addressed, corrected or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person referenced in the Statement of Facts that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts underlying the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct;

(8) The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report, and a senior executive officer with a direct reporting line to the highest-ranking legal compliance officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each JPMC Affiliated QPAM provides its certified Audit Report, by electronic mail to e-oed@dol.gov. This delivery must take place no later than thirty (30) days

following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each JPMC Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each JPMC Affiliated QPAM and the auditor must submit to e-OED@dol.gov any engagement agreement(s) executed pursuant to the engagement of the auditor under this exemption no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request access to all the workpapers created and utilized in the course of the audit, for inspection and review, provided such access and inspection is otherwise permitted by law; and

(12) JPMC must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and JPMC;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a JPMC

Affiliated QPAM and a Covered Plan, the JPMC Affiliated QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to each such Covered Plan, to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a JPMC Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14, other than the Conviction. This condition applies only to actual losses caused by the JPMC Affiliated QPAM's violations. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by the QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and the restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized

abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event the withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC and its affiliates, or damages arising from acts outside the control of the JPMC Affiliated QPAM; and

(7) Each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-15 or PTE 2017-03 that meets the terms of this condition. This condition will also be met where the

JPMC Affiliated QPAM previously agreed to the same obligations required by this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan. Notwithstanding the above, a JPMC Affiliated QPAM will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM provides notice of the exemption as published in the *Federal Register*, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14 to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a JPMC Affiliated QPAM, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a JPMC Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's

receipt of a written asset or investment management agreement from the JPMC Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

For Covered Plan clients that first become clients on or after January 10, 2023, but before May 10, 2023, a JPMC Affiliated QPAM will meet the requirements of this Section (k) to the extent the investment management or comparable agreements with the JPMC Affiliated QPAM includes notification language referencing PTE 2017-03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in this proposed exemption, if granted, is updated, as necessary, by May 10, 2023;

(1) The JPMC Affiliated QPAM must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Conviction. If, during the Exemption Period, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Conviction), relief in this exemption would terminate immediately;

(m) (1) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within a JPMC Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, no person, including any person referenced in the Statement of Facts that gave rise to the Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The annual Exemption Review includes a review of the JPMC Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2017-03; any material change in the relevant business activities of the JPMC Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the JPMC Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance

occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the JPMC Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of JPMC and each JPMC Affiliated QPAM to which such report relates; the head of compliance and the general counsel (or their functional equivalent) of JPMC and the relevant JPMC Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) The annual Exemption Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to

which it relates. The annual Exemption Reviews under this exemption must cover the following periods: January 10, 2023, through December 31, 2023; January 1, 2024, through December 31, 2024; January 1, 2025, through December 31, 2025; and January 1, 2026, through January 9, 2027.

(n) JPMC imposes internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(o) JPMC complies in all material respects with the requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) Each JPMC Affiliated QPAM maintains records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the JPMC Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, JPMC must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by JPMC or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding

the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the JPMC Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed. If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(s) A JPMC Affiliated QPAM will not fail to meet the terms of this exemption solely because a different JPMC Affiliated QPAM fails to satisfy a condition for relief described in Sections III(c), (d), (h), (i), (j), (k), (l),

(p) or (r); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption, other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of JPMC or its affiliates; and

(t) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

(u) Other than former employees who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the conduct underlying the September 29, 2020, deferred prosecution agreement entered into between the Department of Justice and JPMC, JPMorgan Chase Bank, and JPMS (the DPA). Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the DPA.

(v) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA.

EFFECTIVE DATE: If granted, the exemption will be effective for a period of four years beginning on January 10, 2023, and ending on January 9, 2027.

George Christopher Cosby,
Director, Office of Exemption
Determinations,
Employee Benefits Security
Administration,
U.S. Department of Labor.

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